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Cases, Regulations, and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

FEDERAL FARM PROGRAMS

BEGINNING FARMER AND RANCHER DEVELOPMENT PROGRAM. The Cooperative State Research, Education, and Extension Service (CSREES) has issued interim regulations establishing administrative requirements for the Beginning Farmer and Rancher Development Program (BFRDP) to supplement the Competitive and Noncompetitive Non-Formula Federal Assistance Programs. The BFRDP is authorized under Section 7405 of the Farm Security and Rural Investment Act of 2002, as amended by section 7410 of the 2008 Farm Bill. **74 Fed. Reg. 45967 (Sept. 4, 2009)**.

CROP INSURANCE. The FCIC has adopted as final regulations amending the catastrophic risk protection endorsement, the group risk plan regulations, and the common crop insurance regulations to revise those provisions as mandated by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The changes will apply for the 2010 and succeeding crop years for all crops with a 2010 crop year contract change date on or after the effective date of this rule and for the 2011 and succeeding crop years for all crops with a 2010 crop year contract change date prior to the effective date of this rule, October 5, 2009. **74 Fed. Reg. 45537 (Sept. 3, 2009)**.

The FCIC has issued proposed regulations amending the, apple crop insurance provisions of the common crop insurance regulations to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2011 and succeeding crop years. **74 Fed. Reg. 46023 (Sept. 8, 2009)**.

DISASTER ASSISTANCE. The FSA has adopted as final regulations implementing specific requirements for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Forage Disaster Program (LFP) authorized by the 2008 Farm Bill. LFP provides payments to eligible livestock producers that have suffered livestock grazing losses due to qualifying drought or fire. For drought, the losses must have occurred on land that is native or improved pastureland with permanent vegetative cover or is planted to a crop planted specifically for grazing for covered livestock due to a qualifying drought during the normal grazing period for the county. For fire, LFP provides payments to eligible livestock producers that have suffered grazing losses on rangeland managed by a Federal agency if the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a qualifying fire. ELAP provides emergency assistance to eligible producers of livestock, honeybees, and farm-raised fish that have losses due to disease, adverse weather, or other conditions, including losses due to blizzards and wildfires, as determined by the Secretary. ELAP assistance is for losses not covered under other supplemental agricultural disaster assistance payment programs established by the 2008 Farm Bill, specifically LFP, Livestock Indemnity Program, and Supplemental Revenue Assistance Program. Eligible LFP and ELAP losses must have occurred on or after January 1, 2008, and before October 1, 2011. The final regulations specify how LFP and ELAP payments are calculated, what losses are eligible, and when producers may apply for payments. **74 Fed. Reg. 46665 (Sept. 11, 2009).**

MARKET ACCESS PROGRAM. The CCC has issued a proposed rule amending the regulations at 7 CFR Part 1485 used to administer the Market Access Program (MAP) by updating and merging the application requirements and the activity plan requirements to reflect the Unified Export Strategy system currently in place; clarifying the eligibility of activities designed to address international market access issues; modifying the list of eligible and ineligible contributions; revising the portions of the regulation regarding evaluations, contracting procedures, and the compliance review and appeals process; eliminating the Export Incentive Program/Market Access Program as a separate subcomponent; and making other administrative changes for clarity and program integrity. **74 Fed. Reg. 46027 (Sept. 8, 2009).**

NEW ERA RURAL TECHNOLOGY COMPETITIVE GRANTS PROGRAM. The CSREES has issued interim regulations establishing administrative requirements for the New Era Rural Technology Competitive Grants Program to supplement the Competitive and Noncompetitive Non-formula Federal Assistance Programs—General Award Administrative Provisions for this program. **74 Fed. Reg. 45972 (Sept. 4, 2009).**

SPECIALTY CROP RESEARCH INITIATIVE. The CSREES has adopted as final, regulations establishing administrative requirements that contain elements common to all of the competitive and noncompetitive non-formula federal assistance programs the agency administers. The provisions serve as a single agency resource codifying current practices simply and coherently for almost all CSREES competitive and noncompetitive non-formula federal assistance programs except the Small Business Innovation Research Program and the Veterinary Medicine Loan Repayment Program. The final rule has a set of program-specific federal assistance regulations for the Specialty Crop Research Initiative, authorized under section 412 of the Agricultural Research, Extension, and Education Reform Act of 1998, and added by section 7311 of the 2008

Farm Bill. **74 Fed. Reg. 45736 (Sept. 4, 2009)**.

FEDERAL ESTATE AND GIFT TAXATION

GENERATION-SKIPPING TRANSFERS. The IRS has issued proposed regulations that provide rules relating to the disclosure of listed transactions and transactions of interest with respect to the generation-skipping transfer tax under I.R.C. § 6011, conforming amendments under I.R.C. §§ 6111 and 6112, and rules relating to the preparation and maintenance of lists with respect to reportable transactions under I.R.C. § 6112. The regulations affect taxpayers participating in listed transactions and transactions of interest and material advisors to such transactions. The proposed regulations also contain rules under I.R.C. § 6112 that affect material advisors to reportable transactions. The regulations provide guidance regarding the length of time a material advisor has to prepare the list that must be maintained after the list maintenance requirement first arises with respect to a reportable transaction. The regulations also clarify guidance regarding designation agreements. **74 Fed. Reg. 46705 (Sept. 11, 2009)**.

VALUATION. The IRS has adopted as final regulations under I.R.C. § 7477 regarding petitions filed with the United States Tax Court for declaratory judgments with respect to the valuation of gifts. Changes to the applicable law were made by Section 506(c)(1) of the Taxpayer Relief Act of 1997. These final regulations primarily affect individuals who are donors of gifts and provide rules for determining whether a donor may petition the Tax Court for a determination regarding the value of a gift, including guidance on the definition of "exhaustion of administrative remedies." **74 Fed. Reg. 46347 (Sept. 9, 2009)**.

FEDERAL INCOME TAXATION

COOPERATIVES. A cooperative which had been in business for many years decided to sell real property as part of the eventual termination of the cooperative. The cooperative decided to distribute the proceeds of the sale to current members based on patronage but not to attempt to reach members who had left the cooperative prior to the tax year of the sale. The IRS ruled that the proceeds of the sale were patronage-sourced income and that the distribution only to current members was reasonable such that the distributed amount could be deducted from cooperative income. **Ltr. Rul. 200935019, May 14, 2009**.

CORPORATIONS

CHECK-THE-BOX ELECTION**.** The IRS has issued a revenue procedure providing guidance under I.R.C. § 7701 for an eligible entity that requests relief for a late classification election filed with the applicable IRS service center within 3 years and 75 days of the requested effective date of the eligible entity's classification election. The revenue procedure also provides guidance for those eligible entities that do not qualify for relief under this revenue procedure and that are required to request a letter ruling in order to request relief for a late entity classification election. An eligible entity is an entity that failed to obtain its requested classification or reclassification solely because Form 8832, Entity Classification Election, was not timely filed, and the entity has either not filed federal tax or information returns for the first year in which the election was intended because the due date for such filing has not yet passed, or the entity has timely filed all required federal tax and information returns consistent with its required classification for all of the years the entity intended the requested election to be effective. If an entity is not required to file such returns, each affected person must have met the filing requirements. Relief must be requested before three years and 75 days from the requested effective date and reasonable cause for the failure to timely make the classification election must be shown. **Rev. Proc. 2009-41, I.R.B. 2009-39**.

LIFE INSURANCE. A C corporation purchased a paid-up life insurance policy on the life of an unrelated individual from that individual. The corporation became the beneficiary of the policy and borrowed the funds to purchase the policy. The interest on the loan was non-deductible under I..R.C. § 264(a)(4). On the death of the individual, the corporation receives the death benefit and has gross income equal to the death benefit less the amount paid for the policy and the disallowed interest. The IRS ruled that the disallowed interest under I.R.C. § 264(a)(4) reduces earnings and profits for the taxable year in which the interest would have been allowable as a deduction but for its disallowance under § 264(a)(4). The disallowed interest does not further reduce earnings and profits when the death benefit is received under a life insurance contract. **Rev. Rul. 2009-25, I.R.B. 2009-38**.

DEPLETION. For purposes of determining percentage depletion under I.R.C. § 613A(c) for oil and gas produced from marginal properties, the IRS has published a table of the applicable percentages for marginal production that covers tax years beginning in calendar years 1991 through 2009. **Notice 2009-74, I.R.B. 2009-38**.

DISASTER LOSSES. On August 21, 2009, the President determined that certain areas in Tennessee are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding which began on July 15, 2009. **FEMA-1856-DR.** On September 1, 2009, the President determined that certain areas in New York are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on August 8, 2009. **FEMA-1857-DR.** Accordingly, taxpayers in the areas may deduct the losses on their 2008 federal income tax returns. See I.R.C. § 165(i).

The IRS has announced that victims of storms and flooding that occurred on August 8, 2009, in the New York counties of Cattaraugus, Chautauqua and Erie may qualify for IRS disaster

relief as a result of the president declaring these areas federal disaster areas. Taxpayers who reside or have businesses in the disaster area will have certain deadlines, including return filing and tax payment deadlines, postponed until October 7, 2009. As long as deposits were made by August 24, failure to deposit penalties for employment and excise tax deposits due on or after August 8 and on or before August 24 are waived. Taxpayers not in the covered disaster area, but with records in the covered area necessary to meet deadlines, are entitled to relief. All relief workers affiliated with organizations assisting in the relief activities in the covered disaster areas and any individuals visiting the areas who are killed or injured as a result of the disaster are entitled to relief. Taxpayers who suffer a loss will have to determine whether to claim a casualty loss on an original or amended return for 2008, keeping in mind that for 2009, the loss from the casualty is reduced by $500, without regard to whether the losses exceed 10 percent of a taxpayer's adjusted gross income. Taxpayers claiming the loss on 2008 returns should put the disaster designation "New York/Severe Storms and Flooding" at the top of the form. **New York Disaster Relief Notice, NY-2009-27.**

DISCHARGE OF INDEBTEDNESS. The taxpayers, husband and wife, engaged a company to negotiate the reduction of a debt to a credit card company. The company obtained a debt forgiveness of $8,768 on the credit card and charged the couple $2,126 in fees. The credit card company issed a Form 1099-C, Cancellation of Debt and listed the entire forgiven amount as cancelled debt. The taxpayers argued that the amount of discharge of indebtedness income was reduced by the fee charged for the negotiation. The court held that there was no authority for deduction of the fee; therefore, the entire amount of debt forgiven was taxable income to the taxpayers. The taxpayers also argued that, because the debt was negotiated, the debt was a disputed debt determined through the negotiation. The court rejected this argument because the taxpayers failed to provide evidence of a bone fide dispute. **Melvin v. Comm'r, T.C. Memo. 2009-199**.

ENHANCED OIL CREDIT. The IRS has issued the inflation adjustment factor for use in determining the enhanced oil recovery credit under I.R.C. § 43. The inflation adjustment factor for calendar year 2009 is 1.5003. Because the reference price as determined under I.R.C. § 45K(d)(2)(C) for 2008 ($94.03) exceeds $28 multiplied by the inflation adjustment factor for 2008 by $42.01, the enhanced oil recovery credit for qualified costs paid or incurred in 2009 is phased out completely. The GNP implicit price deflator to be used for calendar year 2009 is 122.407. **Notice 2009-73, I.R.B. 2009-38**.

ETHANOL PRODUCER CREDIT. In one tax year, the taxpayer's ethanol plant was rated by the EPA for a permit as having a capacity less than 60 million gallons. Although the facility was designed for a capacity of less than 60 million gallons, in the following tax year, the taxpayer discovered that the facility actually had a capacity larger than 60 million gallons. In a Chief Counsel Advice letter, the IRS ruled that the taxpayer was eligible for the small ethanol producer credit under I.R.C. § 40(b)(4) in the first tax year. **CCA Ltr. Rul. 200935022, May 11, 2009**.

HEDGES. In a Chief Counsel advice memorandum, the IRS has ruled that gains or losses generated by hedges on minerals by a mining company are not income or loss from mining for purposes of Treas. Reg. § 1.613-4 governing depletion. **AM 2009-008ARD 174-2, Sept. 10, 2009**.

HOBBY LOSSES. The taxpayers, husband and wife, owned and operated a farm on which they grew soybeans. The taxpayers claimed that they were unable to plant soybeans during the three tax years involved because of too wet or too dry conditions. The court received evidence, however, that other area farmers were able to plant in at least two of the three years. The taxpayers failed to provide complete written records, claiming that the records were lost during a hurricane or a computer crash. However, the court noted that the taxpayers made little effort to obtain records from third parties, such as their bank which could have supported their claims. The court held that taxpayers did not operate the farm with an intent to make a profit because (1) the taxpayers did not intend to plant a crop for harvest because they did not follow the area planting customs; (2) the taxpayers made no attempt to change their operation in the face of failure to plant a soybean crop; (3) the taxpayers, in their seventies provided no evidence of time devoted to the farm or the hiring of labor to perform farm tasks; (4) the expected appreciation of the farm was not relevant because the income from the farm did not exceed the costs of the farm operation; (5) the taxpayers failed to obtain any profits because the taxpayers rarely planted a crop; (6) the taxpayers offset substantial income with the farming losses claimed; and (7) the taxpayers were motivated primarily by the tax shelter aspects of the farm. **Fowler v. United States, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,623 (W.D. La. 2009)**.

The taxpayer operated a horse purchasing, training and selling activity. The taxpayer did not maintain records for each horse and kept few records of the business activity. The court held that the taxpayer was not engaged in the horse activity with the intent to make a profit because (1) in general the taxpayer did not maintain sufficient records to operate the activity in a business-like manner and to prove the business activities of the activity; (2) the taxpayer had no records of marketing the horses; (3) the taxpayer had no expertise in the sale and purchase of horses, with experience limited to riding horses; (4) the taxpayer provided no evidence that the horse property would appreciate in value; (5) the taxpayer had no previous success with similar activities; (6) the activity claimed only significant losses which offset other income; and (7) the taxpayer derived significant personal pleasure from the activity. **Phemister v. Comm'r, T.C. Memo. 2009-201**.

INSTALLMENT METHOD OF REPORTING. The taxpayer sold real property for four installment payments. The taxpayer failed to timely elect out of the installment method of reporting the gain from the sale. The error was noticed only after the taxpayer hired a new tax return preparer. The IRS granted the taxpayer an extension of time to elect out of the installment method. **Ltr. Rul. 200935007, May 26, 2009**.

LEVY. The taxpayer owed taxes to the IRS and sent a letter to the trustee of the taxpayer's pension plan for a full withdrawal to be paid directly to the IRS. The letter was insufficient to constitute an election to withdraw the funds. The taxpayer committed suicide before the withdrawal was made. In a Chief Counsel Advice letter, the IRS ruled that it could not levy against the pension plan account. **CCA Ltr. Rul. 200935026, Feb. 24, 2009**.

LIKE-KIND EXCHANGES. The taxpayer corporation had commercial real estate which it wanted to sell, in a tax-free exchange, to a buyer corporation. The taxpayer owned 62 percent of the stock of a third corporation and sought to acquire property owned by the third corporation through a three party exchange. The taxpayer would transfer the property to a qualified intermediary who would first sell the property to the second corporation and use the funds to purchase the third corporation's property to be transferred by exchange to the taxpayer. The court noted that the tax-free exchange rules do not apply to related-party exchanges if a purpose of the exchange was to avoid federal income tax. The court held that the use of a qualified intermediary did not remove application of the related party rule; therefore, if tax avoidance was a purpose of the transaction, the taxpayer could not use the like-kind exchange rules to defer gain on the transactions here. The court held that the taxpayer failed to prove that no tax avoidance purpose existed for the transfers; therefore, the gain from the transactions was taxable. **Teruya Brothers, Ltd. & Subsidiaries v. Comm'r, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,624 (9th Cir. 2009), *aff'g*, 124 T.C. 45 (2005)**.

NET OPERATING LOSSES. The IRS has issued a reminder to taxpayers about the election to choose the expanded net operating loss: "Eligible taxpayers must act soon if they want to take advantage of the expanded business loss carryback option included in this year's Recovery law. According to the Internal Revenue Service, eligible calendar-year corporations have until Sept. 15, and eligible individuals have until Oct. 15 to choose this special option. This carryback provision offers small businesses that lost money in 2008 an excellent way to quickly get some much needed cash if they were profitable in previous years. This option is only available for a limited time, so small businesses should consider it carefully and act before it's too late. Under the American Recovery and Reinvestment Act (ARRA), enacted in February, many small businesses that had expenses exceeding their income for 2008 can choose to carry the resulting loss back for up to five years, instead of the usual two. This means that a business that had a net operating loss (NOL) in 2008 could carry that loss as far back as tax-year 2003, rather than the usual 2006. Not only could this mean a special tax refund, but the refund could be larger, because the loss is being spread over as many as five tax years, rather than just two. This option may be particularly helpful to any eligible small business with a large loss in 2008. A small business that chooses this option can benefit by: (1) offsetting the loss against income earned in up to five prior tax years, (2) getting a refund of taxes paid up to five years ago, and (3) using up part or all of the loss now, rather than waiting to claim it on future tax returns. Under ARRA, eligible taxpayers can choose to carry back a NOL arising in a taxable year beginning or ending in 2008 for three, four or five years instead of two. Eligible taxpayers are eligible small businesses (ESB) that have no more than an average of $15 million in gross receipts over a three-year period ending with the tax year of the NOL. This includes a sole proprietor that qualifies as an ESB, an individual partner in a partnership that qualifies as an ESB and a shareholder in an S corporation that qualifies as an ESB. This choice may be made for only one tax year. Taxpayers must choose this special carryback by either: (1) attaching a statement to an income tax return for the tax year that begins or ends in 2008 or, (2) claiming a refund on Form 1045, Application for Tentative Refund or Form 1139, Corporation Application for Tentative Refund, or on an amended return for the tax year to which the NOL is being carried back. Most taxpayers still have time to choose the special carryback and get a refund. A calendar-year corporation that qualifies as an ESB must make this choice by Sept. 15, 2009. For individuals, the deadline is Oct. 15, 2009. Deadlines vary for fiscal-year taxpayers, depending upon when their fiscal year ends and whether they are making the choice for the tax year that ends or begins in 2008. A calendar-year taxpayer that chooses the special carryback by attaching a statement to the income tax return has until December 31, 2009, to claim the refund on Form 1045 or 1139, or 3 years after the due date (including extensions) for filing the 2008 income tax return to claim a refund on an amended return. These forms, along with answers to frequently-asked questions about this special carryback, and other details can be found on IRS.gov." **IR-2009-079.**

PARTNERSHIPS

ADMINISTRATIVE ADJUSTMENTS. The taxpayer was a partnership which sold partnership property. The partnership overstated the partnership's basis in the property, resulting in an understatement of taxable income from the sale. More than three years and less than six years after the filing of the tax return for the year of the sale, the IRS filed a final partnership administrative adjustment which resulted from a reduction of the partnership's basis in the property sold. The taxpayer sought summary judgment because the FPAA was filed more than three years after the filing of the return. The IRS argued that the six year limitation applied because the return understated taxable income. The court held that the six year limitation did not apply because the overstatement of basis was not an understatement of receipt of income. **Intermountain Insurance Service of Vail, LLP v. Comm'r, T.C. Memo. 2009-195**.

CHECK-THE-BOX ELECTION. The IRS has issued a revenue procedure providing guidance under I.R.C. § 7701 for an eligible entity that requests relief for a late classification election filed with the applicable IRS service center within 3 years and 75 days of the requested effective date of the eligible entity's classification election. The revenue procedure also provides guidance for those eligible entities that do not qualify for relief under this revenue procedure and that are required to request a letter ruling in order to request relief for a late entity classification election. An eligible entity is an entity that failed to obtain its requested classification or reclassification solely because Form 8832, Entity Classification Election, was not timely filed, and the entity has either not filed

federal tax or information returns for the first year in which the election was intended because the due date for such filing has not yet passed, or the entity has timely filed all required federal tax and information returns consistent with its required classification for all of the years the entity intended the requested election to be effective. If an entity is not required to file such returns, each affected person must have met the filing requirements. Relief must be requested before three years and 75 days from the requested effective date and reasonable cause for the failure to timely make the classification election must be shown. **Rev. Proc. 2009-41, I.R.B. 2009-39**.

PASSIVE ACTIVITY LOSSES. The taxpayers, husband and wife, invested in several partnerships involved in race horses. The husband was a dentist and neither taxpayer materially participated in the race horse activities. The taxpayers relied on the representations of their tax return preparer as to the deducting of losses from the partnerships. The IRS disallowed the deduction of the losses as passive activity losses under I.R.C. § 469. The taxpayers claimed to have been fooled by the return preparer and sought relief based on the financial hardship of having to pay the tax deficiency from the disallowance of the deductions. The court held that the losses were non-deductible passive losses. **Cunningham v. Comm'r, T.C. Memo. 2009-194**.

PENSION PLAN. The IRS has issued several rulings which facilitate increasing use of 401(k) plans by taxpayers. *Rev. Rul. 2009-30* addresses how automatic enrollment in an I.R.C. § 401(k) plan can work when the plan includes an escalator feature. *Rev. Rul. 2009-31* addresses in two situations that amendments to a qualified profit sharing plan requiring or permitting annual contributions of the dollar equivalent of unused paid time off under a company's paid time off plan did not cause the profit sharing plan to fail to meet the requirements of I.R.C. § 401(a), provided that such contributions satisfied the nondiscrimination requirements of I.R.C. § 401(a)(4) and the limitations under I.R.C. § 415(c). *Rev. Rul. 2009-32* provides guidance on the tax consequences of an amendment to a tax-qualified retirement plan to permit contributions of an employee's accumulated and unused paid time off under the employer's paid time off plan upon a participant's termination of employment. *Notice 2009-65* facilitates automatic enrollment in retirement plans by providing two sample plan amendments that sponsors, practitioners, and employers can adopt or use in drafting individualized plan amendments to add certain automatic contribution features to their I.R.C. § 401(k) plans. *Notice 2009-66* provides guidance to facilitate automatic enrollment in SIMPLE individual retirement accounts or annuities plans, including questions and answers relating to the inclusion in a SIMPLE IRA plan of an automatic contribution arrangement. *Notice 2009-67* provides a sample amendment that can be used by the sponsor of a SIMPLE IRA plan to add an automatic contribution arrangement. *Notice 2009-68* provides two safe harbor explanations that may be provided to recipients of eligible rollover distributions from an employer plan in order to satisfy I.R.C. § 402(f). **Rev. Rul. 2009-30, Rev. Rul. 2009-31, Rev. Rul. 2009-32, Notice 2009-66, Notice 2009-67, Notice 2009-68, I.R.B. 2009-39.**

The IRS has issued procedures for automatically revoking an election by a multiemployer retirement plan to freeze its Code Sec. 432 funding status under Section 204(a) of the Worker, Retiree, and Employer Recovery Act of 2008 (Pub. L. No. 110-458). **Rev. Proc. 2009-43, I.R.B. 2009-40**.

The IRS has issued guidance describing the federal income tax consequences of rolling over an eligible rollover distribution from a qualified plan described in I.R.C. § 401(a), an annuity plan described in I.R.C. § 403(a), a plan described in I.R.C. § 403(b), or an eligible governmental plan under I.R.C. § 457(b) to a Roth IRA described in I.R.C. § 408A. **Notice 2009-75, I.R.B. 2009-39**.

S CORPORATIONS

SECOND CLASS OF STOCK. The taxpayer S corporation had a policy of distributing amounts to its shareholders sufficient to cover state income taxes resulting from income from the corporation. The taxpayer discovered that its shareholders also had income tax liability in another state and made a payment to the second state to pay the income tax liability of its shareholders in that state. The IRS ruled that the payment did not terminate the S corporation election based on creation of a second class of stock. **Ltr. Rul. 200935018, May 29, 2009**.

SALE OF RESIDENCE. The taxpayer had owned and lived in a residence for 20 years before deciding to move out temporarily so that improvements could be made on the property. During construction, hazardous materials were discovered in the house and the taxpayer had to stay out of the house much longer. The taxpayer sold the house after the construction was completed. However, the IRS held that, because the taxpayer had lived in the house at least two of the previous five years before the sale, the taxpayer was entitled to exclude gain from the sale under I.R.C. § 121. **Ltr. Rul. 200936024, June 9, 2009**.

TRUSTS. The taxpayers, husband and wife, transferred their farm to a trust in an attempt to avoid payment of income tax on the income from the farm, based on tax protestor arguments. The court held that the transfer was a sham because the taxpayers did not received any consideration from the trust, resulting in the insolvency of the taxpayers; the trustees were related to or friends of the taxpayers; and the taxpayers retained possession of and control over the farm. The court also noted that the insurance policies on the farm property listed the taxpayers as beneficiaries. The court held that the income tax liability from the farm income was the responsibility of the taxpayers. **United States v. Bigalk, 2009-2 U.S. Tax Cas. (CCH) ¶ 50,621 (D. Minn. 2009)**.

The taxpayer was an insurance agent who transferred the right to receive insurance policy sales commissions to a trust controlled by the taxpayer. The court held that the taxpayer was liable for the tax on the income because the transfer to the trust was a sham. **Balice v. Comm'r, T.C. Memo. 2009-196**.

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FARM INCOME TAX, ESTATE AND BUSINESS PLANNING SEMINARS

by Neil E. Harl

January 4-8, 2010
Sheraton Keauhou Bay Resort & Spa
Kailua-Kona, Big Island, Hawai'i.

We are happy to report that a sufficient number of people have sent in deposits for this seminar that we have decided to hold the seminar. Thus, the seminar will not be cancelled except for extraordinary circumstances. We encourage all subscribers to let us know if you plan to attend. Additional brochures will be sent out this fall.

Spend a week in Hawai'i in January 2010 and attend a world-class seminar on Farm Income Tax, Estate and Business Planning by Dr. Neil E. Harl. The seminar is scheduled for January 4-8, 2010 at Kailua-Kona, Big Island, Hawai'i, 12 miles south of the Kona International Airport.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Monday through Friday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 400+ page seminar manual *Farm Income Tax: Annotated Materials* and the 600+ page seminar manual, *Farm Estate and Business Planning: Annotated Materials,* both of which will be updated just prior to the seminar.

Here is a sample of the major topics to be covered:

- Farm income items and deductions; losses; like-kind exchanges; and taxation of debt including the Chapter 12 bankruptcy tax provisions.
- Deferring crop insurance proceeds and livestock sales; reinvestment opportunities for livestock to avoid reporting the gain; involuntray conversions.
- Circumstances under which self-employment tax is due
- Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.
- Introduction to estate and business planning.
- Co-ownership of property, including discounts, taxation and special problems.
- Federal estate tax, including alternate valuation date, special use valuation, handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.
- Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.
- Organizing the farm business—one entity or two, corporations, general and limited partnerships and limited liability companies; emphasis on entity liquidations, reorganizations and other strategies for removing capital from the entity.
- Recent developments in the treatment of passive losses of LLCs and LLPs
- Recent legislation tax provisions.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest,* the *Agricultural Law Manual* or the *Principles of Agricultural Law*. The registration fee for nonsubscribers is $695. For more information call Robert Achenbach at 541-466-5544 or e-mail at robert@agrilawpress.com.